IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2090 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIBEN RAVJIBHAI VAGHELA - Petitioner(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR NL RAMNANI for Petitioner(s) : 1,
MR.L.B.DABHI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 16/09/2005

ORAL JUDGMENT

The petitioner has approached this Court with this petition under Article 226 of the Constitution of India seeking following reliefs.

A. Be pleased to admit this petition.

B. Be pleased to issue the directions to the respondents in form of writ of mandamus, Certiorari or any other appropriate writ directing the respondents to give pension, gratuity and all other legal benefits to the petitioner for which she is legally entitled on account of death of her husband Shri Ravjibhai Motibhai Vaghela.

C. Be further pleased to direct the respondents to give to the one of the son of the petitioner compassionate appointment in the respondent department.

D. Be pleased to declare that the petitioner is eligible and entitled to get family pension, gratuity and all other outstanding dues of late Shri Ravjibhai Motilla Vaghela.

E. Be further pleased to direct the respondents to pay all the arrears of family pension, gratuity and all other legal dues to the petitioner with 24% interest from the date of death of deceased Ravjibhai Motibhai Vaghela.

F. Be pleased to award cost of this petition.

G. Be pleased to grant any other and further relief as may be deemed just, fit and proper in the facts and circumstances of the present case.

2. The case of the petitioner is that her husband - Ravjibhai Motibhai Vaghela joined the respondent department as a sweeper and came to be promoted as peon with effect from 1/11/1974 and became a Sipahi on 20/09/1979. The petitioner's husband expired on 8/1/1989 due to illness. According to the petitioner, her husband served the Department for more than 12 years. The case of the petitioner is that despite several representations, she has not been paid either family pension or amount of gratuity, etc... The petitioner is also aggrieved because of non-consideration of claim for compassionate appointment of her sons and hence, this petition.

3. According to the respondent late husband of the petitioner Ravjibhai Motibhai Vaghela was terminated from services by order dated 18/7/1987, because of his continuous absence. The note to this effect has been

made in his service book. The provident fund amount has been paid and, there is no dispute on that point.

3.1It appears that the requisite notice was served on the deceased employee, before passing the order of termination as required under Rule 33 of B.C.S.R., but in vain and, therefore, order of termination came to be passed on 17/8/1987, terminating the services of the late husband of the petitioner, because of prolonged continuous absence from duty.

4.Learned Advocate Mr.Ramani has drawn attention of this Court to various annexures to the petition where under continuously representations were made for payment of gratuity and compassionate appointment. He submitted that no procedure has been followed, before terminating the services of the husband of the petitioner. The petitioner was totally unaware about the same.

5.Learned A.G.P., Mr.L.B.Dabhi has drawn attention of this Court to the affidavit in reply and relevant annexures and indicated that the petitioner has not approached the Court with correct facts. He also submitted that the petition suffers from the defect of

delay and latches and, therefore, the petition may be dismissed.

6. Having considered the rival side contentions and having given a close scrutiny to the material on record, at the outset, it may be noted that the petitioner has not stated anywhere in the petition that her late husband was in service, when he expired on 8/1/1989. This will have a bearing on the overall conduct of the petitioner for the reason that in petition at Para No.8, states that to the best of her knowledge, deceased Ravjibhai Motibhai Vaghela was never terminated from service, nor he was issued any show-cause notice or any charge-sheet by the respondent Department. It would also be relevant to record that in paragraph No.4, it is indicated that petitioner's husband had put in more than 12 years of service. The petitioner's husband joined service on 1/11/1974 and, if 12 years are added, that would make it 1986 approximately. Therefore, when he expired in 1989, he certainly could not have been in service, if length of his service is taken at 12 years. Differently put lack of knowledge on part of the petitioner, when petition was preferred, about termination of service of her husband cannot be accepted.

6.1 This view of the Court is supported by documentary evidence produced by the petitioner herself vide Annexure – F which is dated 22/9/1992. By that annexure, it was indicated to the petitioner's son that his request for reconsidering his case for compassionate appointment cannot be considered, as there is no provision for giving such appointment to dependents of employees, who expired after termination from service. This letter makes it very clear that the deceased was terminated from services before his death and on that count compassionate appointment was refused way-back in 1992. The petitioner is also pursuing the cause of her son in this petition. The petitioner therefore, is aware about termination of service of her husband, prior to his death.

7. Apart from this, the order by which; the services of the petitioner were terminated which is annexed with affidavit in reply, at Annexure – R1, clearly indicates that notice was served on deceased husband of the petitioner, as required under Rule 33 of B.C.S.R., before passing order under Rule 645 of B.C.S.R., because of continuous absence from duty for a period of 28 months. The said notice was sent by Registered Post

A/d., and was served on the deceased on 19/6/1987, as revealed from the postal acknowledgment slip. The petitioner has filed affidavit in rejoinder refuting the contents of the affidavit in reply. But, there is no reason to doubt contemporaneous record produced alongwith the affidavit in reply, more particularly, when the petitioner's own documents indicate that she had knowledge about the service of her husband being terminated, prior to his death since year 1992.

7.1It would be appropriate to record that communication at Annexure – F is addressed to Jashubahi Ravjibhai Solanki / Vaghela. But, knowledge of the petitioner can be legitimately inferred from two aspects. viz. that this produced by the petitioner herself and that the petitioner, in her petition; without joining Jashubhai Ravajibhai Solanki / Vaghela, as party, presses for his compassionate appointment.

8.Thus, in the opinion of this Court, this petition cannot be entertained for following reasons.

i.the late husband of the petitioner was terminated

from service, because of continuous absence which prior to his death.

ii. Rules do not permit grant of family pension in such eventuality.

iii. Rules do not permit grant of compassionate appointment in such eventuality.

iv. The petition suffers from the defect of delay and latches, as atleast from 1992 the petitioner can be inferred to be aware about the stand of the other side. Making of correspondence continuously, even thereafter, would not be a ground to keep the cause alive.

9. It is settled proposition of law that powers under Article 226 of the Constitution of India are to be exercised to serve the ends of justice and to ensure implementation of Rules and Law and to issue appropriate writs, if it is found that apprehended action or inaction is dehors the provisions of Rules or Laws or Constitution. This Court is therefore, not inclined to exercise its extraordinary powers under

Article 226 of the Constitution of India. The petition must fail and stands dismissed. Notice is discharged. No costs.

(A.L.DAVE, J.)

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